In the Supreme Court

OF THE

United States

OCTOBER TERM, 1947

No. 101

MARRINER S. ECCLES, RONALD RANSOM, M. S. SZYMCZAK, JOHN K. MCKEE, ERNEST G. DRAPER and RUDOLPH M. EVANS,

Petitioners,

v.

PEOPLES BANK OF LAKEWOOD VILLAGE, CALIFORNIA.

On writ of certiorari to the United States Court of Appeals for the District of Columbia

PETITION FOR REHEARING.

BRIEF IN SUPPORT OF THE PETITION FOR REHEARING.

SAMUEL B. STEWART, JR.,
LUTHER E. BIRDZELL,
300 Montgomery Street, San Francisco 4, California,
Attorneys for Respondent.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1947

No. 101

MARRINER S. ECCLES, RONALD RANSOM, M. S. SZYMCZAK, JOHN K. McKEE, ERNEST G. DRAPER and RUDOLPH M. EVANS,

Petitioners,

v.

PEOPLES BANK OF LAKEWOOD VILLAGE, CALIFORNIA.

On writ of certiorari to the United States Court of Appeals for the District of Columbia

PETITION FOR REHEARING.

Peoples Bank respectfully petitions the Court for a rehearing on the following grounds and for the following reasons:

I.

The decision is based upon statements of fact not supported in the record.

II.

The Court has misconstrued both Condition No. 4 and the policy of the Board and has erroneously disregarded the Board's construction and policy as urged on its behalf in the Court of Appeals and in this Court.

III.

The decision leaves unsettled the question of administrative importance which caused this Court to hear the case.

IV.

The decision is based upon a point not argued orally by counsel on either side, and one of the five concurring members of the Court did not hear oral argument at all.

V.

The disposition is ambiguous, as counsel cannot determine from the opinion whether the Court intended to afford plaintiff an opportunity to supply at a trial the evidence, which is said to be essential (See Opinion, p. 8) to justify a favorable exercise of discretion by the Court, or to deprive plaintiff of such an opportunity.

Dated this 29th day of March, 1948.

SAMUEL B. STEWART, JR.,
LUTHER E. BIRDZELL,
Attorneys for Respondent.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1947

No. 101

MARRINER S. ECCLES, RONALD RANSOM, M. S. SZYMCZAK, JOHN K. MCKEE, ERNEST G. DRAPER and RUDOLPH M. EVANS,

Petitioners,

v.

PEOPLES BANK OF LAKEWOOD VILLAGE, CALIFORNIA.

BRIEF IN SUPPORT OF THE PETITION FOR REHEARING.

A study of the opinion of the Court has led to the conviction that it is our duty to the Court and to the respondent to petition for a rehearing.

The Court has expressly refrained from holding that the Board of Governors of the Federal Reserve System had power under the statutes to impose the extraordinary Condition No. 4 upon the plaintiff Bank. Though declining to enter a declaratory judg-

ment, it has, however, placed the Board under a moral obligation never to enforce, according to its terms, the condition the Board had prescribed. This is obviously, in effect, a partial adjudication.

It is clear that the Court's conclusions have been influenced by vitally erroneous conceptions of the record and that the end result of the Court's action is to inject needless confusion into a legal situation readily capable of being fully adjudicated. In support of the petition, therefore, we shall first direct the Court's attention respectfully but specifically to the facts.

I.

As illustrative of the importance of the record facts, the Court at pages 7 and 8 of its opinion said:

> "We are asked to contemplate as a serious danger that a body entrusted with some of the most delicate and grave responsibilities in our Government will change a deliberately formulated policy after urging it on this Court against the Bank's standing to ask for relief."

And again, the concluding sentence of the Court's opinion says:

> "Surely, when a body such as the Federal Reserve Board has not only not asserted a challenged power but has expressly disclaimed its intention to go beyond the legitimate 'public interest' confided to it, a court should stay its hand."

The applicability of the first of these statements to the present case depends upon the Court having before it a clearly and deliberately formulated policy which, if assuredly followed, would protect the rights of the Bank. But, as we shall demonstrate, the Board expressly disavows any such policy.

The second statement loses all of its force if it appears that the Board *has* asserted a challenged power and if it further appears that there *is* an intent to exercise that power *whether or not* the power be "confided to it." When the Court uses the expression "'public interest' confided to it" and puts the words *"public interest"* in quotation marks, there is a clear implication that the quotation is from the only source of the Board's power—the statutes, for there can be no other source of power. But *those words are not quoted from any statute* conferring any such power on the Board.

Let us now note more specifically certain factual statements in the opinion which are necessarily relied upon as affording validity to the conclusions of the Court.

In its opinion on pages 4 and 5, the Court has deduced from certain correspondence and certain testimony before a congressional committee that, in imposing the condition, the Board "sought to block" Transamerica from the purchase of stock in unit banks, especially in certain cases where Federal agencies have not permitted Transamerica banks to establish branches. If it is of any consequence, there is nothing in this record to indicate that this is such a special case.

We readily agree that the Board in prescribing the condition sought to block Transamerica, but the quoted testimony of Mr. Eccles (Opinion, top of p. 5) has nothing whatsoever to do with the expression of any authorized policy underlying Condition No. 4. Mr. Eccles was testifying concerning the desirability of legislation, which, as he said in that same connection, *"would give* the Board the power to require what they would consider a policy in the public interest." (Hearing before the Committee on Banking and Currency,

House of Representatives, 78th Congress, First Session, H. R. 2634, p. 14.) That is very far from being a statement either that a power *then existed* to block Transamerica by prescribing Condition No. 4, or that a policy of enforcing such power in the public interest had been established. It is clearly inconsistent with the existence of such power. The power is further directly negatived by Mr. Eccles' testimony before the same Committee and at about that same time (78th Congress, First Session, H. R. 1699, p. 133, where he expressly stated that the Board had no power to prevent Transamerica Corporation from purchasing stock of banks and up to that time had never asked for any).

An inadvertent lack of fidelity to a few isolated facts would ordinarily be of little importance, but in this case where facts are marshalled and made to constitute a foundation for judicial action and have become of "decisive importance", inaccuracies are of fundamental significance. Let us illustrate further. On page 6 of its opinion, the Court says that the Bank had always insisted it is independent of Transamerica; that it disclaims any intention to give up its independence; that what it really fears is that under changed conditions it may be required to withdraw from the Reserve System; that the Bank argues that, if this happens, the Comptroller of the Currency has agreed as a Director of the Federal Deposit Insurance Corporation not to insure the Bank; that the Bank seeks a declaration of its rights "*if* it should lose its independence", etc.

There is a thread of inaccuracy running through every one of these statements:

The "declaration of its rights" which the Bank seeks.

The Bank has never sought a declaration of its rights "*if* it should lose its independence". It has sought a declaration of *its present right* to maintain membership in the Reserve System and insurance of its deposits on the same basis that every other bank is permitted to maintain them. It seeks to maintain that right against the actual claim in this Court of a *present right in the Board* to terminate the Bank's membership at any time. The Bank has not at any time made any contention or sought to convince the Board or a court that under Condition No. 4 it should not or could not be disturbed so long as its shareholders other than Transamerica Corporation were able to control it. It has been the Bank's consistent contention that it cannot be disturbed legally at all by reason of any circumstances described in Condition No. 4, whether a sale of stock should involve one share or any number of shares. The Bank fully recognizes its responsibility to conduct all of its operations according to law and applicable regulations, but it is its position that whatever supervisory control exists with respect to transactions encompassed by Condition No. 4 must be exercised over the parties to such transactions, and not over the Bank.

The importance of a true understanding of the facts is made most manifest in that part of the Court's opinion on page 5, wherein the Court refers to the Board having "satisfied itself that Transamerica's holding did not affect the Bank's control", and adds: "The Bank had vigorously insisted on its continued independence, in urging upon the Board the harmlessness of Transamerica's ownership of some of the Bank's stock, and the Board, upon independent investigation found such to be the fact." Here it is implied that there had been some sort of a proceeding

before the Board in which the Bank had participated, made such contentions and succeeded in convincing the Board. Nothing of this sort took place at all and we can only infer that the Court has been misled by the Board's resolution (R. 10-11). The reference to action by the Board clearly refers to its resolution of January 28, 1946, which shows that the Board had merely reviewed, in the absence of the Bank, the last regular report of examination made by the Board's examiners. This was used in support of a motion to dismiss which showed that the Board wished to avoid a defense of the legality of Condition No. 4; but when, on a second motion, it had a modicum of success in the District Court, it promptly relied upon the literal meaning of the condition and represented to the Court of Appeals that "the facts now justify action" (see II below).

"Independence".

The only time the Bank has had any occasion to make any representations concerning its independence was when, after the rejection of its application, the Board had indicated its willingness to reconsider and exacted as a condition precedent a showing that neither Transamerica Corporation nor any other bank holding company "has any interest" in the Bank and that every stockholder should give written assurance of no commitments for sale of stock to any such organization and "that they do not intend to enter into any" such agreements. Ultimately Condition No. 4 was worded to penalize the Bank if Transamerica acquired "any interest". "Independence" wherever used in connection with the Bank's application and admission was clearly used to indicate *complete lack of connection, signifying absence of any stock ownership.* (See letter from the Vice President of the Federal Reserve Bank, March 11; 1942, R. 53.)

The Bank did disclaim any *obligation* to Transamerica—it was required so to do—but it never was required to insist upon its "independence" and never did, "disclaim any intention to give up its independence", if that was something with respect to which the Bank can be said to have had an intention. The stockholders fully complied with this condition precedent. The Board was satisfied without exacting any restraining clause or by-law. Furthermore, there has never been any controversy between the Bank and the Board as to whether the Bank is "independent". The record shows none.

"What the Bank really fears".

The Bank is now affected by and is now concerned with the present disadvantages incident to this condition, which have nothing to do with "independence" or lack of it, but stem from Condition No. 4 and the fact that Transamerica Corporation now owns a substantial "interest" in the Bank. The Bank, indeed, is much concerned and presently sustaining provable damages, which are alleged in the complaint and admitted (R. 7-8; 23-24), because, if the Board has the legal right which it claims, it *is empowered* by the condition to forfeit the Bank's membership now or at any time and without any hearing except upon an admitted fact,—that Transamerica has acquired "any interest". Any other description in terms of what the Bank "really fears" is inaccurate.* Of course, the

---

*With respect to the reality of one problem confronting the Bank, the Court has clearly overlooked the following requirement of the Superintendent of Banks in a formal communication of September 24, 1941: (R. 36)

"It is noted from your original application that you proposed to capitalize by selling $300,000 par value of common

Bank anticipates even greater damage when the forfeiture is actually invoked.

The agreement not to insure.

Mr. Leo T. Crowley, Chairman of the Board of the Federal Deposit Insurance Corporation, and not the Comptroller of the Currency, was the putative spokesman of that Board in regard to the agreement not to insure a withdrawing bank. This agreement, not communicated to the Bank, is an admitted fact. Mr. Crowley had also represented to Congress that the banking agencies, including the Federal Deposit Insurance Corporation, had no way under the law of stopping a holding company from extending its ownership of banks (R. 101). And it has never removed a Bank for that cause (Resp. Br. A 15-19).

II.

"Policy of the Board".

The opinion of this Court attaches great weight to the "policy" of the Board. But in determining that policy it is respectfully submitted that the Court does not attach appropriate importance to various expres-

---

stock and that you would have a surplus of $75,000. In a letter dated September 20th, forwarded after a discussion with you and Mr. Martin, we note that it is your desire not [sic, now] to commence business with a paid-up capital of $100,000 and a surplus of $25,000. There is no objection on my part to your commencing business at this capital structure and of course from time to time as the Bank Act requires it because of deposit liability or the nature of the business which you may assume commands it, you will increase the paid-up capital and surplus. Therefore, you are authorized to commence business in this territory with a paid up cash capital of $100,000 and a paid up cash surplus of $25,000."

sions of the Board's policy which are contained in the record and in the Board's briefs and petition.

Counsel for the Board have strenuously objected *in this Court* to a construction of the January 28, 1946 resolution by the Court of Appeals, the effect of which, they say, is "to emasculate the Condition" (Petitioners' Br., p. 30) and they have resented having their resolution considered as a concession or as a departure from the literal meaning of Condition No. 4. They have admitted it was the primary purpose that the resolution should serve as an aid to their motion to dismiss made in the District Court. They have vigorously protested its use in this litigation as "administratively interpreting Condition No. 4" as being "wholly gratuitous" (Petitioners' Br., p. 31).

The first three specifications of error in our opponents' petition to this Court for a writ of certiorari were based upon the departure of the Court of Appeals from the literal construction of Condition No. 4 and protested a restrictive construction under which the Board would be required to make any other finding than the breach of the condition as literally construed. (See Petition, 5, 14.)

The following two sentences from page 6 of their brief in the Court of Appeals clearly show that, under petitioners' own interpretation of the condition and the facts, the condition is presently broken (emphasis supplied):

> "Considerations of the public interest demanded that the Condition be imposed; the same considerations will determine when, if ever, the Condition need be enforced. * * * And in the second place, the Board's failure thus far to take any action under the Condition, *even though now justified by the facts*, is conclusive proof that the

Board did not prejudge the matter* at the time the Condition was agreed upon."

The opinion of the Court of Appeals shows affirmatively that it relied upon this statement. Was it in error in so doing? While there may well be greater reluctance now on the part of the Board to proceed under the condition in view of the advantageous and inconsistent use in this Court of a disclaimer of immediate purpose, the disclaimer and the decision actually operate only to prolong the period of uncertainty and confusion during which the Bank must continue to sustain and endure cumulative damages. As we view it, the Court being unmindful of these phases of the record has mistakenly concluded that the Board has not asserted a challenged power. *Condition No. 4 is an assertion of power* and the Board's refusal to rescind the condition, as respectfully demanded before suit, was a reassertion of power. The legal right of the Board to prescribe it is certainly challenged in the only orderly and practical way it can be challenged under a government where enlightened procedure has been developed to supplant self help—a government in which laws measure the rights of men.

But even putting aside the policy expressions made in the Board's attempt to secure the greatest advantage possible in litigation, and looking alone to its more deliberate expressions, what has the Board said of its policy and the exercise of its power?

An official letter of the Board to Transamerica Corporation written as a formal expression of the Board's policy on the day (February 14, 1942) the first membership application of the respondent Bank was re-

*Clearly the Board had prejudged a cause for expulsion when it prescribed the condition.

jected contained the following: The Board should "under existing circumstances, decline permission for the acquisition directly or indirectly of any additional banking offices or *any substantial interest* therein by Transamerica Corporation," (R. 69, 70). An interest of approximately 11 per cent, which Transamerica now owns in the respondent Bank, is a "substantial interest."* Such was the record when the suit was begun.

As an expression of the Board's permanent general policy with respect to restrictions upon the privileges of state member banks, it is believed that the Court should also have taken into consideration one expression which was the most deliberate of all. The Board gave an expression to the Congress, a coordinate branch of the government, actually engaged in the process of enacting legislation. It stated that the Board would not "prescribe any condition of membership which will * * * subject the applying bank to any greater limitations or restrictions than those under which national banks shall operate; because the Board never has and never would prescribe any such discriminatory condition of membership." (See Respondent's Br. p. 34.) Of course, national banks remain member banks after their stock is acquired by holding companies (even by Transamerica Corporation) and there is no possible procedure for forfeiture of their membership rights in the Reserve System for such a cause.**

---

*The Board has since recommended legislation in which 10 per cent ownership of a bank makes it a subsidiary. § 829 and H.R. 6225, 79th Congress, 2nd Session (April 30, 1946).

**A similar illustration of confessed lack of Board power and of its policy with respect to such conditions of membership is found in the testimony of Honorable Roy A. Young, Governor of the

This record shows plainly that the policy so stated to the Congress has been reversed, for the condition which the Board has imposed on this Bank by way of restriction is applicable "if * * * Transamerica * * * acquires * * * any interest in such Bank * * *." It is undisputed that Transamerica has acquired an interest in such Bank. Even conceding the force of the moral obligation which the Court's opinion casts upon the petitioners to stay the Board's pursuit of the policy expressed in the condition—the legality of which it has vigorously urged—in the absence of a declaratory judgment confirming some such legal limits as were found by the Court of Appeals, all of

---

Federal Reserve Board, before the same Committee on March 18, 1930. The following is quoted therefrom:

> "Under date of May 2, 1927 (sic), Congressman McFadden addressed a letter to the Comptroller of the Currency, suggesting that he adopt administrative measures calculated to control or prevent the growth of chain banking among national banks and sent a copy of his letter to the Federal Reserve Board with the suggestion that the board should adopt similar administrative measures with reference to State member banks of the Federal reserve system. *The board, under date of May 18, 1928 (X-4854) replied that it was powerless under the law to take any such action.* The board called attention to the fact that it had suggested legislation along this line, but that Congress had not adopted its suggestions, and also called attention to the fact that Congress in the McFadden Act had amended the law so as apparently to take away the board's power to control this practice through conditions of membership. *The Board's letter*, a copy of which is attached as Exhibit EE, *concluded with the statement that the remedy lies with Congress.*" (Emphasis supplied).

(Statement of Governor Roy A. Young of the Federal Reserve Board before the Banking and Currency Committee of the House of Representatives, U. S. Congress, 71st, Second Session, Hearing under H. Res. 141, March 18, 1930, Vol. I, Part 4, pp. 442-43.)

the parties to this controversy are destined to endure a period of uncertainty respecting valuable rights and important powers readily capable of being judicially and legally defined.*

III.

This Court brought the case up on certiorari because the ruling of the Court of Appeals involved a matter of importance to the administration of the Federal Reserve Act (Opinion p. 3). Yet the Court's decision throws that matter of importance into a state of utter confusion.

Three courts have now attributed three different meanings, interpretations or purposes to a strange and unprecedented condition. The parties appear to be nearer to a common interpretation of the meaning than are the courts, but the parties differ radically as to its validity. As the situation now stands, the last decision of an appellate court on the question of administrative importance is that the Reserve Board lacked the power to impose Condition No. 4. This Court has not discussed the correctness of that ruling. Thus, in the absence of a rehearing and decision on the merits, the Reserve Board is placed in the position of being required either to conform to the now re-

*We leave without discussion that portion of the opinion of the Court which may well be construed to mean that it is the duty of a regulated corporation to adopt voluntarily all by-laws within its legal power and the duty of its stockholders (whether original subscribers or not) to enter voluntarily into whatever agreements will best carry out any policy the regulating agency may prescribe. Such appears to be the dictum without regard to whether there is lawful authority to prescribe the policy and in the face of an uncriticized determination by the Court of Appeals that the policy under consideration is illegal. (See Opinion p. 7).

versed decision of the Court of Appeals with respect to the limits of its power, or, in the alternative, to jeopardize the valuable property rights of Peoples Bank, its stockholders and its depositors by action which it knows is considered illegal by the parties affected as well as by a responsible appellate court.

In this posture of the case, one might well inquire of what use is the remedy of declaratory judgment if it is not available to relieve against the hazards and uncertainties confronting all parties to this suit and available at a time when declaration without injunction should dispose of the controversy (cf. Opinion, p. 8). Every administrative act which could contribute to or cause the *present uncertainty* is a completed administrative act and the party affected by those acts has done all in its power to bring about a correction through administrative action before resorting to litigation.

We respectfully submit that when a surgeon has wrongly diagnosed gangrene as affecting the tip of a lower extremity and has indicated amputation at the knee, medical science would not look with favor upon his objection to consultation with the internist nor regard his answer as complete and satisfactory if he said that for the moment he would amputate at the ankle and keep the other operation under advisement.

Grounds IV and V of the Petition do not require elaboration.

Dated: March 29, 1948.

Respectfully submitted,

SAMUEL B. STEWART, JR.,
LUTHER E. BIRDZELL,
Attorneys for Respondent.

Certificate of Counsel.

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

March 29, 1948.

Samuel B. Stewart, Jr.,
Luther E. Birdzell.

SUPREME COURT OF THE UNITED STATES

No. 101.—October Term, 1947.

Marriner S. Eccles, Ronald Ransom, M. S. Szymczak, et al., Petitioners, v. Peoples Bank of Lakewood Village, California.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 15, 1948.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This is a proceeding under the Declaratory Judgment Act, 48 Stat. 955, 28 U. S. C. § 400. Its aim is to have declared invalid a condition under which the respondent became a member of the Federal Reserve System. The California State Banking Commission authorized the establishment of the respondent provided it obtained federal deposit insurance. This requirement could be met either by direct application to the Federal Deposit Insurance Corporation or through membership in the Federal Reserve System. §§ 12 B (e) and (f) of the Federal Reserve Act, 48 Stat. 162, 170, 49 Stat. 684, 687, 12 U. S. C. §§ 264 (e) and (f). Respondent sought such membership but its application was rejected. The promoters of the Bank, having requested the Board of Governors of the Federal Reserve System to reconsider the application for membership, were advised that favorable action depended on a showing that the Transamerica Corporation, a powerful bank holding company, did not have, nor was intended to have, any interest in this Bank. Having been satisfied on this point, the Board of Governors granted membership to respondent subject to conditions of which the fourth is the bone of contention in this litigation.

This condition reads as follows:

> "4. If, without prior written approval of the Board of Governors of the Federal Reserve System, Transamerica Corporation, or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary thereof, acquires, directly or indirectly, through the mechanism of extension of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of the usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System."

The Board of Governors gave the respondent this explanation for the condition:

> "The application for membership has been approved upon representations that the bank is a bona fide local independent institution and that no holding company group has any interest in the bank at the time of its admission to membership, and that the directors and stockholders of the bank have no plans, commitments or understandings looking toward a change in the status of the bank as a local independent institution. Condition of membership numbered 4 is designed to maintain that status."

Some time later, in 1944, Transamerica, without prior knowledge of the respondent, acquired 540 of the 5,000 shares of its outstanding stock. The Bank duly advised the Board of Governors of this fact, but requested that it be relieved of Condition No. 4. This, the Board of Governors declined to do. Then followed this action, in the United States District Court for the District of

Columbia, against the Board of Governors for a declaration that Condition No. 4 was invalid and for an injunction against its enforcement. A motion by the defendants to dismiss the complaint, in that it failed to set forth a justiciable controversy, was denied. 64 F. Supp. 811. The defendants answered, claiming that the Bank's acceptance of membership barred it from questioning the validity of Condition No. 4, and that in any case the condition was valid, and moved for judgment on the pleadings. The Bank, having filed a number of affidavits, moved for summary judgment. The District Court, in an unreported opinion, held that the Bank was bound by the condition on which it had accepted membership in the Federal Reserve System, and gave judgment for the defendants. The Court of Appeals for the District of Columbia, one judge dissenting, reversed. It rejected the defense of estoppel and sustained the validity of the condition "only as a statement that, if the Board of Governors should determine, after hearing, that Transamerica's ownership of the bank's shares has resulted in a change for the worse in the character of the bank's personnel, in its banking policies, in the safety of its deposits or in any other substantial way, it may require the bank to withdraw from the Federal Reserve System." 161 F. 2d 636, 643–44. Accordingly, it remanded the case to the District Court for entry of a judgment construing Condition No. 4 to such effect. Since this ruling involves a matter of importance to the administration of the Federal Reserve Act, we brought the case here. 332 U. S. —.

Condition No. 4 provides for withdrawal from membership in the Federal Reserve System, for violation of its provisions, "within 60 days after written notice from the Board of Governors . . . ." Section 9 of the Federal Reserve Act authorizes the Board of Governors to revoke

the membership status of a bank "after hearing."[1] If the case contained no more than the foregoing elements, three questions would emerge:

(1) Was this action premature, brought as it was before the Board of Governors commenced revocation proceedings?

(2) If not, could the respondent attack the validity of a condition on the basis of which it had been accepted, and had enjoyed, membership? Compare *Fahey* v. *Mallonee*, 332 U. S. 245, 255.

(3) If so, did the Board of Governors have power to impose the condition as a means of guarding against acquisition by Transamerica of an interest in respondent?

However, with due regard for the considerations that should guide us in rendering a declaratory judgment, the record as a whole requires us to dispose of the case without reaching any of these questions.

Extended correspondence between Marriner S. Eccles, the then Chairman of the Board of Governors of the Federal Reserve System, and A. P. Giannini, Chairman of the Board of Directors of Transamerica, together with the testimony of Eccles before the House Committee on Banking

---

[1] "If at any time it shall appear to the Board of Governors of the Federal Reserve System that a member bank has failed to comply with the provisions of this section or the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto, or has ceased to exercise banking functions without a receiver or liquidating agent having been appointed therefor, it shall be within the power of the board after hearing to require such bank to surrender its stock in the Federal reserve bank and to forfeit all rights and privileges of membership. The Board of Governors of the Federal Reserve System may restore membership upon due proof of compliance with the conditions imposed by this section." 38 Stat. 251, 260, as amended, 46 Stat. 250; 251, 49 Stat. 684, 704, 12 U. S. C. § 327. See also § 5 of the Administrative Procedure Act, 60 Stat. 237, 239, 5 U. S. C. § 1004.

and Currency, set forth the reason for the Board's insistence on the fourth condition. The Board sought to block "acquisition by Transamerica of stock in independent unit banks, especially when it constitutes a means of evading the requirements of the Federal agencies who will not permit its banks to establish additional branches." Hearings before Committee on Banking and Currency, House of Representatives, on H. R. 2634, 78th Cong., 1st Sess., p. 15. The Board was concerned not that Transamerica might purchase some shares of independent banks for the ordinary purposes of investment, but that it would buy into banks in order to acquire control, and thereby turn banks, though outwardly independent, into parts of its own banking network. The Board of Governors was therefore carrying out the policy underlying Condition No. 4 when it formally disavowed any intention to invoke that condition against respondent merely because of acquisition by Transamerica of an interest in the Bank, with no indication of subversion of its independence.[2] This action by the Board was taken after it had satisfied itself that Transamerica's holding did not affect the Bank's control. The Bank had vigorously insisted on its continued independence, in urging upon the Board the harmlessness of Transamerica's ownership of some of the Bank's stock, and the Board, upon inde-

[2] The following is an extract from the minutes of a meeting of the Board on January 28, 1946:

"Upon consideration of the latest report of examination of the Peoples Bank, Lakewood Village, California, from which the Board concluded that there had been no substantial change in the control, management or policy of the bank resulting from the acquisition by Transamerica Corporation of certain shares of the bank's stock, the Board, by unanimous vote, decided that there was no present need in the public interest for any action by the Board with respect to the condition of membership of the bank relating to acquisition of its stock by Transamerica Corporation."

pendent investigation found such to be the fact. Accordingly, the Board concluded that "the public interest" called for no action.

A declaratory judgment, like other forms of equitable relief, should be granted only as a matter of judicial discretion, exercised in the public interest. *Brillhart* v. *Excess Insurance Co.*, 316 U. S. 491; *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U. S. 293, 297–98; H. R. Rep. No. 1264, 73rd Cong., 2d Sess., p. 2; Borchard, Declaratory Judgments (2d ed. 1941) pp. 312–14. It is always the duty of a court of equity to strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief. Especially where governmental action is involved, courts should not intervene unless the need for equitable relief is clear, not remote or speculative.

The actuality of the plaintiff's need for a declaration of his rights is therefore of decisive importance. And so we turn to the facts of the case at bar. The Bank has always insisted that it is independent of Transamerica; the Board of Governors has sustained the claim. The Bank stands on its right to remain in the Federal Reserve System; the Board acknowledges that right. The Bank disclaims any intention to give up its independence; the Board of Governors, having imposed the condition to safeguard this independence, disavows any action to terminate the Bank's membership, so long as the Bank maintains the independence on which it insists. What the Bank really fears, and for which it now seeks relief, is that under changed conditions, at some future time, it may be required to withdraw from membership, and if this happens, so the argument runs, the Comptroller of the Currency, one of the Directors of the Federal Deposit Insurance Corporation, has agreed with the Federal Reserve Board to refuse any application by the Bank for deposit insurance as a non-member.

Thus the Bank seeks a declaration of its rights *if* it should lose its independence, or *if* the Board of Governors should reverse its policy and seek to invoke the condition even though the Bank remains independent and *if* then the Directors of the Federal Deposit Insurance Corporation should not change their policy not to grant deposit insurance to the Bank as a non-member of the Federal Reserve System. The concurrence of these contingent events, necessary for injury to be realized, is too speculative to warrant anticipatory judicial determinations. Courts should avoid passing on questions of public law even short of constitutionality that are not immediately pressing. Many of the same reasons are present which impel them to abstain from adjudicating constitutional claims against a statute before it effectively and presently impinges on such claims.

It appears that the respondent could, if it wished, protect itself from the loss of its independence through adoption of by-laws forbidding any further sale or pledge of its shares to Transamerica or its affiliates. See California Corporations Code, L. 1947, c. 1038, § 501 (g).[3] To this the Bank replies that even if its independence is maintained, the Board of Governors may change its policy, and seek enforcement of Condition No. 4 whether or not such enforcement is required by "the public interest" in having independent banks, which the condition

[3] "501. The by-laws of a corporation may make provisions not in conflict with law or its articles for:

"(g) Special qualifications of persons who may be shareholders, and reasonable restrictions upon the right to transfer or hypothecate shares."

Likewise, the shareholders, or such of them as chose to, could presumably bind themselves not to sell or pledge to Transamerica, and by noting this agreement on their certificates could bind their transferees. Cf. *Vannucci v. Pedrini*, 217 Cal. 138.

now serves. Such an argument reveals the hypothetical character of the injury on the existence of which a jurisdiction rooted in discretion is to be exercised. In the light of all this, the difficulties deduced from the present uncertainty regarding the future enforcement of the condition, possibly leading to uninsured deposits, are too tenuous to call for adjudication of important issues of public law.[4] We are asked to contemplate as a serious danger that a body entrusted with some of the most delicate and grave responsibilities in our Government will change a deliberately formulated policy after urging it on this Court against the Bank's standing to ask for relief.

A determination of administrative authority may of course be made at the behest of one so immediately and truly injured by a regulation claimed to be invalid, that his need is sufficiently compelling to justify judicial intervention even before the completion of the administrative process. But, as we have seen, the Bank's grievance here is too remote and insubstantial, too speculative in nature, to justify an injunction against the Board of Governors, and therefore equally inappropriate for a declaration of rights. This is especially true in view of the type of proof offered by the Bank. Its claims of injury were supported entirely by affidavits. Judgment on issues of public moment based on such evidence, not subject to probing by judge and opposing counsel, is apt to be treacherous. Caution is appropriate against the subtle tendency to decide public issues free from the safeguards of critical scrutiny of the facts, through use of a declaratory summary judgment. Modern equity practice has tended

[4] The bank asserted, in its affidavits, not that lack of confidence had deterred depositors, but that deposits had been so heavy that capital expansion was in order, but might be disadvantaged by fear of prospective investors to risk personal assessment if deposits were uninsured.

away from a procedure based on affidavits and interrogatories, because of its proven insufficiencies. Equity Rule 46 forbade such practice save in exceptional cases. See *Los Angeles Brush Mfg. Corp.* v. *James*, 272 U. S. 701; cf. Federal Rule of Civil Procedure 43 (a). Again, not the least of the evils that led to the Norris-LaGuardia Act was the frequent practice of issuing labor injunctions upon the basis of affidavits rather than after oral proof presented in open court. See Amidon, J., in *Great Northern R. Co.* v. *Brosseau*, 286 F. 414, 416; Swan, J., in *Aeolian Co.* v. *Fischer*, 29 F. 2d 679, 681–82.

Where administrative intention is expressed but has not yet come to fruition (*Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324), or where that intention is unknown (*Great Atlantic & Pacific Tea Co.* v. *Grosjean*, 301 U. S. 412, 429–30), we have held that the controversy is not yet ripe for equitable intervention. Surely, when a body such as the Federal Reserve Board has not only not asserted a challenged power but has expressly disclaimed its intention to go beyond the legitimate "public interest" confided to it, a court should stay its hand.

Judgment reversed.

THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 101.—October Term, 1947.

Marriner S. Eccles, Ronald Ransom, M. S. Szymczak et al., Petitioners, *v.* Peoples Bank of Lakewood Village, California.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 15, 1948.]

Mr. Justice Reed, with whom Mr. Justice Burton joins, dissenting.

In order to get admission into the Federal Reserve System, the respondent was required to put into its charter a provision which was allegedly beyond the power of the Board of Governors of the System to require. It seems obvious that the requirement was a restriction on the market for the respondent's stock and therefore detrimental to the conduct of its business, a continuing threat of the Board to exclude respondent from the benefits of the System.

Respondent desired to be free of what it regarded as an illegal requirement. The Board of Governors has not agreed that it will never enforce the prohibition but holds it as a threat to force the respondent to resign from the System upon acquisition of control by those deemed undesirable by the Board.

Certainly, as I see it, there is not only the possibility of future injury but a present injury by reason of the threat to the marketability of respondent's stock. It may have a substantial bearing upon the willingness of customers to establish banking relations with it, especially major relationships looking toward long and close associations of interests. It requires no elaboration to con-

vince me that the threat is a real and substantial interference by allegedly illegal governmental action. As that threat has taken a definite form by the enforced agreement for withdrawal, we have not something that may happen but a concrete written notice requiring withdrawal by this respondent from the System on the happening of a fact which is contrary to the Board's idea of the public interest. Whether the Board's idea of a legitimate public interest is correct is the very point at issue.

In such circumstances there is a justiciable controversy, the claim of a right and a present threat to deprive a particular person of the right claimed. The damage from its actual or threatened enforcement is, of course, irremediable. Any bank would be seriously injured by even an effort to oust it from the System. This gives jurisdiction under the Declaratory Judgment Act. Judicial Code § 274d.

This Court has discretion to refuse to consider a petition for a declaratory judgment and an injunction to stop a threatened or existing injury. *Federation of Labor* v. *McAdory*, 325 U. S. 450, 461. That discretion is not unfettered. *Altvater* v. *Freeman*, 319 U. S. 359, 363. There is no difference between declaratory suits involving an equitable remedy and other equity suits. Where an actual controversy with federal jurisdiction exists over the legal relations of adverse parties, discretion usually cannot properly be exercised by refusing an adjudication. *Meredith* v. *Winter Haven*, 320 U. S. 228; cf. *Bell* v. *Hood*, 327 U. S. 678. Unusual circumstances, not here present, such as other pending suits, *Brillhart* v. *Excess Insurance Co.*, 316 U. S. 491, or supersession of state authority, *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U. S. 293, sometimes justify refusal of relief.

Under the facts of this case, however, it seems improper to refuse an adjudication at this time. If governmental power is being unlawfully used to constrain respondent's operation of its business, respondent is entitled to protection, now. See *Columbia Broadcasting System* v. *United States*, 316 U. S. 407, a case where prematurity was clearer than here.

I would decide this case on the merits.